



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,557	03/21/2005	Pascal Bruna	Q86514	6383

23373 7590 05/03/2006

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

BARNEY, SETH E

ART UNIT PAPER NUMBER

3752

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/528,557

Applicant(s)

BRUNA ET AL.

Examiner

Seth Barney

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the actuator means including a lateral actuating element that is displaceable in a direction that is different from the displacement direction of the spray means must be shown or the feature(s) canceled from the claim(s). Currently the actuator means (40) appears to be in the exact same position in Figure 3 as in Figure 4 even though the spray means (30) has moved. Furthermore, the lateral actuating element does not appear to be numbered in the specification nor appear in the drawings. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-9 and 11-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear as to what structure in the Figures corresponds to the lateral actuator element from the specification as claimed. It is unclear how the actuator means interacts with the lateral actuator element to displace in a direction that is different from the displacement direction of the spray means. The specification appears to disclose a pivot tab but it is unclear from the specification or the drawings how operation of a pivot tab would actuate the device. The specification merely states that structural elements perform certain operations but offers no mechanical explanation. For example page 5 of the specification recites "The actuator means 40 preferably comprise a lateral actuator element, i.e. an element which is displaced in a direction that is different from the direction of displacement of the spray means 30. By way of example, the lateral actuator element 40 can be made of a pivot tab which is mounted on the body 10, and which co-operates with the spray means 30 so as to displace said

spray means during actuation." There is no further mechanical disclosure as to how this operation occurs. Furthermore, reference number 40 has been used to designate both the actuator means and the lateral actuating element (see quoted lines above).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1,2, and 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,905,365 to Colombo in view of U.S. Patent No. 5,137,528 to Crose.

Regarding claim 1, Colombo discloses means for actuating fluid spray device such that the actuation element is lateral to the unit and is displaceable in a direction

different to the displacement direction of the spray means. Colombo does not disclose a reservoir that is a sealed unit separate from the body.

Croze discloses a spraying device comprising a body (14) provided with a spray orifice (17), a reservoir (1) containing the fluid to be sprayed, spray means (15), the reservoir being closed in a sealed manner before the spray device is actuated for the first time, the body including reservoir opening means (16) adapted to open the reservoir from the body, the reservoir being filled with fluid and sealed hermetically before it is assembled in the body, the body including receiver means (14) for receiving the reservoir, and later access means for enabling the filled reservoir to be assembled sideways into the body and to be secured therein.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the entire spray device of Croze (Figure 2) for the spray body portion of Colombo in order to more precisely and more ergonomically actuate the device of Croze.

Regarding claim 2, both Croze and Colombo have a window in the spray body.

Regarding claim 4, Croze discloses a barbed arrow (not shown, see column 5 lines 28 to 32) to secure the reservoir.

Regarding claim 5, the reservoir of Croze is a hollow tube that is closed in a sealed manner by first and second plugs (6,7) disposed in the tube, the fluid being disposed between the first and second plugs. See Figure 1.

Regarding claim 6, the spray means of Croze includes an axially-displaceable rod (15) that co-operates with the first plug of the reservoir.

Regarding claim 7, the reservoir opening means include piercing means for piercing the second plug. See Figure 2 of Crose.

Regarding claim 8, Colombo as modified has the body, the spray means, the actuator means, and the reservoir opening assembled to form a unit.

Regarding claim 9, the spray device of Crose a cover (the barrel of the syringe). See column 5 lines 19 to 23.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,905,365 to Colombo and U.S. Patent No. 5,137,528 to Crose as applied to claims 1 and 2 above, and further in view of U.S. Patent No. 4,581,022 to Leonard et al.

Neither Colombo nor Crose disclose two-diametrically opposed windows. U.S. Patent No. 4,581,022 to Leonard discloses two-diametrically opposed windows on an analogous spraying device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spraying device of Crose with two diametrically opposed windows in order to allow the user to see how much fluid is left from both sides of the sprayer.

8. Claims 1-9 and 11-18 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,145,703 to 6,145,703 to Opperman in view of U.S. Patent No. 5,137,528.

Regarding claim 1, Opperman discloses a fluid spraying device comprising:
a body (8) provided with a spray orifice, a reservoir (111) containing the spray fluid to be sprayed, a spray means (16) for spraying one or more doses of the fluid contained in the reservoir, and actuator means (31), the reservoir being closed in a

Art Unit: 3752

sealed manner before the spray device is actuated for the first time, the body including reservoir opening means (15) adapted to open the reservoir while the device is being actuated, said reservoir forming a sealed unit that is separate from the body (see figures 3 and 7), said reservoir being filled with fluid and being sealed hermetically (see column 3 lines 61 to 64) before it is assembled in said body, and said body including receiver means (107,112) for receiving the reservoir, said actuator means being characterized in that said actuator means include lateral actuator element (33) that is displaceable in a direction that is different from the displacement direction of the spray means.

Opperman does not disclose lateral access means for enabling the filled reservoir to be assembled sideways into the body. Crose discloses lateral access means to insert a filled reservoir sideways into a spraying body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the body of Opperman with the lateral access means of Crose in order to easily replace empty reservoirs with filled reservoirs.

Regarding claim 2, Opperman discloses that the walls may include a window. See column 5 lines 9 to 15.

Regarding claim 3, the entire body being a window every point would be diametrically opposite another window.

Regarding claim 4, Opperman further discloses snap fit mean (107,108,109).

Regarding claim 5, the reservoir of Opperman is formed by a hollow tube (107), which is closed in a sealed manner by a first (116) and second (124) plugs disposed in said tube, the fluid being disposed between the plugs.

Regarding claim 6, Opperman does not disclose an axially displaceable rod to actuate the sprayer. Corse discloses an axially displaceable rod (15) to actuate the sprayer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the action means of Corse for the actuation means of Opperman in order to actuate the sprayer from the bottom rather than the top to allow for easier actuation.

Regarding claim 7, the reservoir means includes piercing means (15) for piercing the second plug.

Regarding claim 8, the spray means, actuator means, and reservoir opening means are assembled to form a unit, the reservoir being assembled in said reservoir after it has been filled and plugged.

Regarding claim 9, the modified device has a cover.

Regarding claims 11 and 12, the actuator element is displaced in a direction transverse (towards the body) to the displacement direction (axial to the body) of the spray means.

Regarding claim 13 and 14, the spray device would be used in the nasal cavity.

Regarding claim 15, Opperman does not disclose an axially displaceable rod to actuate the sprayer. Corse discloses an axially displaceable rod (15) to actuate the sprayer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the action means of Corse for the actuation means of Opperman in order to actuate the sprayer from the bottom rather than the top to allow for easier actuation.

Regarding claim 16, Opperman further discloses snap fit mean (107,108,109).

Regarding claim 17, the lever of Opperman pivots.

Regarding claim 18, the opening device is a needle.

Response to Arguments

9. Applicant's arguments filed February 1, 2006 have been fully considered but they are not persuasive. The argument that objects moving in directly opposing directions are not in different directions is not persuasive. When something is moving in a direction, that direction includes the way in which the object is facing. Therefore, while the trigger may be moving directly opposite the plunger, it is in fact moving in a different direction.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to show the art with respect to sprayers. Grychowiski et al., Hegemann et al., Fuchs et al., Regan, and Greiner-Perth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri), first friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3752

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney
Examiner
Art Unit 3752

sb



DINH Q. NGUYEN
PRIMARY EXAMINER